Supreme Court, U.S.
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No. 95-

In the Supreme Court of the United States

OCTOBER TERM, 1995

COMBUSTION ENGINEERING, INC., *Petitioner*

v.

CHERYL MALOOF JOHANSEN, *et al.*, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the $15 million remitted punitive exaction in this case, which is nearly 320 times respondents' compensatory damages, is so excessive as to violate the Due Process Clause of the Fourteenth Amendment.

2. Whether the original $45 million punitive exaction reflects jury passion and prejudice that may be cured only by the granting of a new trial.

PARTIES TO THE PROCEEDING

In addition to the named respondent, Cheryl Maloof Johansen, the following were plaintiffs below and are respondents in this proceeding: R.H. Beckum, Kathleen McGill Beggs, Oleeta Britt, Bernard Allen Danner, Mildred Goldman, Raymond E. Jones, William E. Jones, Katherine McGill Lamar, Martha Jones Long, Raleigh M. Long, Jerry L. Maloof, Aubrey G. McGill, Elizabeth Bevel McGill, Eugene H. McGill, Jr., James Curtis McGill, Samuel Clary McGill, Walter Collins McGill, Inez McWhorter, Clarence E. Norman, Sr., Lawrence S. Peeler, Gregory B. Richard, and Cherry McGill Rowland. Raymond Jones, William Jones, and Martha Jones Long have settled their claims against petitioner. Accordingly, it is petitioner's belief that they do not have an interest in this proceeding.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Combustion Engineering, Inc. (hereinafter "CE")[1] respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The court of appeals did not issue an opinion in this case. Its order affirming the district court's judgments (App., *infra*, 1a-2a) is reported at 67 F.3d 314. The orders of the district court disposing of respondents' post-trial motions (App., *infra*, 3a-8a) are unreported. The orders of the district court entering judgment on the jury's verdicts as remitted by the plaintiffs (App., *infra*, 9a-35a) are unreported.

JURISDICTION

The Eleventh Circuit issued its order affirming the district court's judgments on September 8, 1995. The Eleventh Circuit denied CE's timely filed motion for rehearing on November 22, 1995 (App., *infra*, 36a-37a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the U.S. Constitution provides in relevant part: "No person shall be * * * deprived of life, liberty, or property, without due process of law."

STATEMENT

In this case, CE was held liable for failing to prevent acidic water from escaping from a former mine site into streams that flowed through 16 parcels of property owned by the 23 respondents. The jury awarded respondents an aggregate $47,000 in compensatory damages and, in the words of the district court (4/25/94 Tr. 107), a "shock[ing]"

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[1] CE is a wholly owned subsidiary of Asea Brown Boveri Inc. CE has no subsidiaries whose shares are publicly traded.

$45 million in punitive damages.[2] The trial court, concluding that permitting the $45 million punishment to stand in full would "give[] the system a black eye" (*id.* at 108), ordered a new trial unless the plaintiffs accepted a remittitur to $15 million. After the plaintiffs did so, the court of appeals declined to alter further the remaining massive punishment (and indeed declined even to give a word of explanation for its decision).

This petition presents two questions: (1) whether the $15 million remitted punishment remains so excessive as to violate the Due Process Clause of the Fifth Amendment; and (2) whether the original $45 million punishment reflects jury passion or prejudice that is curable only by the granting of a new trial.

The facts set forth below are taken from uncontroverted evidence or, where disputed at trial, are taken in the light most favorable to the verdict.

1. *Mining operations on Graves Mountain.* Graves Mountain is a unique geological formation (Tr. 205-206, 820) located in Lincoln County, Georgia. Beginning in the 1920s, Tiffany's mined the property for rutile, a substance used for polishing diamonds. Tr. 610-611. At some point thereafter (not specified in the record), Aluminum Silicates, Inc. began mining the site for kyanite, a mineral used to make heat-resistant products. Tr. 265. Sometime in the mid-1960s, Combustion Chemicals, Inc. was formed to purchase the site and conduct kyanite mining operations. *Ibid.* Combustion Chemicals was at all times a wholly-owned subsidiary of CE. Tr. 266.

Combustion Chemicals conducted mining operations until 1984, when it sold the property to Pasco Mining Company.

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[2] The designation "4/25/94 Tr. __" refers to the transcript of the hearing on the post-trial motions. The designation "Tr. __" refers to the trial transcript.

Tr. 318, 936. Pasco operated the mine site until November 1, 1986, at which time the facility and all environmental responsibilities attendant to it reverted to Combustion Chemicals pursuant to the parties' 1984 contract. Tr. 319, 936-937. Combustion Chemicals never resumed mining operations. Tr. 937. In 1990, it was merged into CE. Tr. 266. Because there is no dispute that CE is responsible for Combustion Chemicals' liabilities, we shall hereinafter refer to both entities as CE.

2. *The acidic water problem.* As with many industrial processes, the mining of kyanite has environmental consequences. At the time mining began, Graves Mountain was, in essence, a "big solid rock." Tr. 177. The kyanite was embedded within the rock. The mine operator would remove, crush, and process the rock in order to extract the kyanite. Tr. 176, 566. The operator would then deposit the remaining crushed rock, or "tailings," in containment areas, known as "tailings ponds." Tr. 176, 566-567. One of the minerals remaining in the tailings was pyrite. When rainwater falls on pyrite that has been exposed to oxygen, a chemical reaction takes place that renders the water more acidic. Tr. 177, 178, 682. Although most of the water on CE's property was collected and treated in a "freshwater pond" (Tr. 306, 370-371, 390, 565-573, 988-989), during heavy rains acidic rainwater sometimes entered streams that emanated from CE's property and flowed through properties downstream.

CE and the owners of the downstream properties lived in peaceful coexistence throughout the time the mining operations were ongoing. Although the runoff from the mine site affected the quality of the streams running through the neighboring properties (see Tr. 429, 431, 441, 446-447, 491-492, 498-499, 507-508, 509-511, 554-555, 581, 607-608, 649-650), the owners of those tracts rarely complained to CE during the close to 20 years that it conducted mining operations there. See Tr. 431-432, 447-448, 462, 472-473, 493-494, 520-521, 563, 607-608, 654. See also Tr. 803 (trial

court's observations that "there were very few vocal and aggressive complaints, if any" and that "there does seem, in this evidence, to be a paucity of complaints up until the time that the lawsuits were conceived"). When owners of downstream properties did complain about escaping water, silt build-up or other problems, CE responded decisively to remedy those problems. Tr. 420, 436, 515-517, 520-521, 573, 1024.[3]

3. *The reclamation of Graves Mountain.* When Pasco acquired the mine site from CE, it was required to submit to the Environmental Protection Division ("EPD") of the Georgia Department of Natural Resources a plan for reclaiming the site. That plan estimated the cost of reclaiming the site at $169,200. See Ct. Exh. 1, at 3.[4] That plan was approved by EPD and was in effect at the time CE reacquired the property from Pasco. Tr. 940. Upon reacquiring the property, CE dismantled the mining facility pursuant to Pasco's reclamation plan. Tr. 358, 375, 383-384, 937-938, 940-941, 969. CE then set about determining what other steps needed to be taken in order "to control any type of rainfall that would come on to the mountain." Tr. 384. Accordingly, it "went about studying elevation and topo[graphic] maps to determine the drainage patterns." *Ibid.*

CE also entered into discussions with EPD for purposes of developing an amended reclamation plan "to reflect the conditions that [CE] found when [it] took the property back over." Tr. 941. See also Tr. 382. As a result of those

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[3] The record also reflects that when CE was aware of a problem, it moved to fix it even in the absence of complaints. See, *e.g.*, Tr. 376, 569-570.

[4] Court Exhibit 1 is a composite of several different documents. Unfortunately, the pages are not numbered consecutively. Our page references are derived by counting consecutively from the cover sheet of the exhibit.

discussions, CE developed a four-phase supplemental plan that went well beyond the plan submitted by Pasco and previously approved by the EPD. Tr. 382-383. The CE plan, complete with timetables for its implementation, was submitted to EPD in October 1988 and approved by EPD in December 1988. Tr. 383, 947; Ct. Exh. 1, at 30-43. In its approval letter, EPD indicated that it "appreciated [CE's] prompt submittal of a formulated work schedule and a time frame in which to accomplish Phases I, II, III, and IV." Ct. Exh. 1, at 43. The approval letter further indicated that EPD "look[ed] forward to working with [CE] in restoring the Graves Mountain site to an area that will be of increased value to [CE] and to future generations in Lincoln County." *Ibid.*

The first phase of the plan called for CE to reclaim the 13.5-acre plant site and an additional 3.5-acre area by grading them, sloping them in keeping with sound engineering practices, covering them with topsoil where necessary, and then seeding them. It also called for CE to create berms and holding ponds to control water flow and to apply mulch and ground matting where necessary. Ct. Exh. 1, at 30-32. Also as part of the first phase, CE committed to replace the existing drainage system with an underground system that would be designed to handle all discharged water from the freshwater pond. *Id.* at 32. CE fully implemented phase one. Tr. 948. See also Tr. 386-389.

The second phase of the plan called for the reclamation of an additional 29 acres of the site. Ct. Exh. 1, at 38. CE committed to grading, sloping, planting, and installing berms and pipes to ensure that all water from these areas would be diverted into the freshwater pond. *Id.* at 39-40. This phase also involved the remodeling of three drainage basins. *Id.* at 40. CE fully implemented this phase. Tr. 948.

The third phase of the plan involved the reclamation of 33 more acres. Ct. Exh. 1, at 41. This phase called for the

same kind of techniques as the first two phases. *Ibid.* CE fully implemented this phase. Tr. 949.

The final phase of the plan involved reclamation of two tailings ponds covering 104 acres. Ct. Exh. 1, at 42. At the time the plan was submitted and approved, this phase contained an objective — reclamation of the two ponds — but no specific plan for its accomplishment. The reason was that, at the time, "there [were] two studies underway that could greatly effect [*sic*] the final results." *Ibid.* The plan indicated that, if the results of the studies were unpromising, reclamation would begin no later than April 1, 1990, "with a completion date coinciding with the establishment of an acceptable permanent cover of vegetation." *Ibid.* As of the time of trial, this phase of the plan remained ongoing. Tr. 949.

Both in conjunction with these four phases and subsequently, CE has been actively engaged in attempting to prevent acidic water from entering the streams emanating from its property. Specifically, since reacquiring the property from Pasco, CE has utilized berms, drains, a piping system, and a system of diversion ditches to channel surface water to the freshwater pond, where it is treated to bring it into compliance with state water quality standards. Tr. 288-289, 306-308, 331-332, 371, 373, 386-387, 388-389, 954-955, 966. The water is then discharged in a controlled fashion into a stream below the pond pursuant to a discharge permit issued by the EPD. Tr. 954, 966. The permit requires CE to monitor the discharges and to submit monthly reports to EPD. Tr. 331, 371. See also Tr. 312.

Notwithstanding CE's efforts, acidic water has periodically escaped into the streams emanating from CE's property. In particular, although the freshwater pond was engineered to applicable specifications (Tr. 955), there were two unusually heavy rain events in 1992 in which substantial amounts of untreated water escaped from the pond. Tr. 307, 334-335, 337, 339-340, 955-956. On both occasions, CE immediately

reported the escapes to EPD (Tr. 335, 338, 339-340, 341-342, 955, 1212-1213; P. Exh. 10) and immediately undertook corrective actions (Tr. 340-341, 342, 955-957, 1213; P. Exh. 10). EPD specifically praised CE for its decisive action in response to the June event. Ct. Exh. 1, at 61.

In addition to these one-time events, in late 1990 or 1991 CE discovered that there were small seeps coming from a tailings pond known as West Pond 1 and a second tailings pond, known as the pyrite pond. Tr. 289-290, 303-305, 950-951, 971, 1006, 1206, 1210.[5] Some time after suit was filed in August 1991, CE also discovered that acidic water was seeping from the north side of the property. Tr. 964-965, 972, 996-997. That part of the property contains some old tailings ponds that had been fully reclaimed and revegetated well before mining ceased. See Tr. 308-309, 946, 965, 997-998.[6]

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[5] The berm beneath West Pond 1 had leaked in 1976. At that time, CE rebuilt the core of the berm. For at least the remaining years during which CE operated the mining facility (1976-1984), the berm did not leak. Tr. 569-570. After CE began reclaiming West Pond 1 pursuant to the supplemental reclamation plan, it discovered a small hole in the side of the berm. Tr. 365-366. CE filled in that section of the berm with a backhoe. That corrective action plugged the leak. Tr. 366. As indicated in text, in late 1990 or 1991, CE discovered that the berm had developed a new leak.

[6] At the time CE reacquired possession of the property from Pasco, the employee responsible for the reclamation effort walked the perimeter of the property and found no water on the north side. Tr. 372-373. When CE did discover that water was escaping from the north side of the property, the source was far from obvious. See Tr. 309, 972. Once CE located the source of the seep, it began to work on plans to remedy the problem by piping the water from the area of the seep to the freshwater pond. Tr. 309, 311, 1205. As of the time of trial, the plans had been completed, but had not yet been submitted to EPD for approval. Tr. 309-311.

Roughly contemporaneously with the discovery of the seep from the pyrite pond, EPD issued an administrative complaint against CE alleging that acidic water was escaping from the pyrite pond and that there had been a discharge of acidic water from the freshwater pond. Tr. 984-985. The complaint did not allege problems with either West Pond 1 or the north side of the property. CE immediately entered into discussions with EPD, which ultimately resulted in a consent order dated September 6, 1991. Tr. 985-986.

Pursuant to the consent order, CE agreed to submit a plan for preventing acidic water from escaping from the property, redesign the water treatment system, and reclaim the west side of the freshwater pond. Tr. 986-987. CE submitted the required plan in October 1991. Ct. Exh. 1, at 44-60; Tr. 951. After receiving EPD approval on March 3, 1992 (see D. Exh. 55), CE set about implementing the plan. As it had promised in the plan, it graded the pyrite pond, covered it with an impermeable high density polyethylene cap, covered that with topsoil, and began revegetation. It also built a limestone retention pond beneath the pyrite pond so as to catch any water that continued to seep from that pond. Tr. 303, 315, 951-952, 974; Ct. Exh. 1, at 57. Finally, it installed a water diversion system, comprised of diversion ditches, checkdams, and detention ponds (Tr. 975; Ct. Exh. 1, at 46-56) and made improvements to the freshwater pond in order to better control the discharges from that pond (Tr. 333-334; Ct. Exh. 1, at 57). Although West Pond 1 was not the subject of any administrative charges and was not covered by the consent order, CE made several efforts to seal the berm at that pond so as to stop the seep. Tr. 1006, 1210.

The work on the pyrite pond slowed the seep considerably, but did not stop it entirely. Tr. 952, 1005, 1209-1210, 1215. The efforts to stop the seep from West Pond 1 also were not entirely successful. Tr. 1210, 1215-1216. See also Tr. 305-306. Accordingly, CE developed a plan to install a

piping system that would take the water from both the pyrite pond and West Pond 1 to the freshwater pond. Tr. 313, 952-953, 1210. That plan was submitted to EPD in November 1992 and was approved in April 1993. Tr. 953; Ct. Exh. 1, at 72. Work began a week later and was in progress at the time of trial, with a scheduled completion date of July 1993. Tr. 953, 1205-1206. While work on the piping system was ongoing, CE also performed alterations to remove the standing water from the pyrite pond. Tr. 1005-1006.

From the time it began dismantling the mining plant through June 1991, CE spent approximately $700,000 in reclaiming the property. Tr. 389, 949-950. Between that time and April 1993, CE spent an additional $633,000 on measures for preventing the escape of acidic water. Tr. 964. In addition, other measures were either in progress at the time of trial or were planned to commence after trial. See Tr. 309-311, 956-960, 1205-1206. The cost of the measures that were underway brought CE's total expenditures for reclamation of the site to approximately $1.6 million as of the time of trial. Tr. 1205.

4. *Proceedings below.* Respondents are 23 individuals, who own a total of 16 tracts downstream from the CE property. Only a handful of these individuals live on their property. See Tr. 399-400, 425-426, 497, 575, 641-643. Some of the respondents do not use their property at all (Tr. 324, 328, 330) and several have been to their property (or the streams on it) only rarely if at all over the past several years (Tr. 328, 422, 460-461, 463-464, 466). Those of respondents who use their property do so for raising cattle (see Tr. 400, 432, 497, 551, 595, 643), storing wrecked cars (Tr. 433), hunting (Tr. 440, 483, 582-583), timbering (Tr. 445, 453, 461-462, 464-465, 470, 472, 488, 551, 576, 592, 595, 601-602, 615-616, 643), and growing hay (Tr. 489-490, 504, 584-585, 643).

From November 1986 (the time CE retook possession of the site) through August 1991, not a single one of the 23

respondents felt sufficiently aggrieved about the escape of acidic water from the site to complain to CE. See Tr. 424, 431-432, 447-448, 462, 472-473, 493-494, 520-521, 563, 607-608, 654, 964, 989. See also Tr. 803. Nonetheless, several of respondents filed suit against CE in August 1991, alleging nuisance and trespass. Several others filed a similar suit in May 1992. After the two suits were consolidated, the remaining respondents were added as plaintiffs by motion.

The case was tried to a jury in a two-phase trial in which issues relating to punitive damages were tried separately from the issues of liability for the underlying torts and compensatory damages. Because Georgia has a four-year statute of limitations for trespass and nuisance, the parties were in agreement, and the jury was instructed, that the relevant time frame for damages purposes was the four-year period prior to the commencement of the plaintiffs' suits. Tr. 17, 55, 211, 325, 1166-1167, 1171-1172, 1173, 1179.

At trial the plaintiffs did not claim that the condition of the streams caused any personal injury, diminution in property value, damage to crops or animals, or other economic loss. See Tr. 329-330, 411-412, 428, 434-435, 443-445, 453, 461-462, 468, 471-472, 481, 488-490, 503-504, 553-554, 582-585, 594-596, 602, 608-609, 647, 652, 769. The only harms plaintiffs alleged were that the streams looked and smelled bad, that the streams no longer contained fish, and that cows would not drink from the streams. See Tr. 403-404, 428-429, 435, 441, 452, 467, 478-480, 499, 501-502, 552, 554, 577, 644, 648-649. Many of the plaintiffs admitted that these harms were the product of the mining operations, not the reclamation activities during the four years preceding the initiation of their lawsuits. Tr. 413-414, 429, 431, 441, 446-447, 491-492, 498-499, 507-508, 509-511, 554-555, 581, 607-608, 650. Some admitted that conditions have improved since mining ceased. Tr. 435, 485-486, 504-505, 522-523, 562-563, 652. See also Tr. 1021-1022 (testimony of non-plaintiff neighbor).

In the first phase of the trial, after hearing disputed evidence about the condition of the streams, the jury returned a total of 13 verdicts for compensatory damages in favor of the various plaintiffs in the combined amount of $47,000. The 13 verdicts ranged from $1,000 to $10,000. App., *infra*, 9a-35a. The jury also awarded the plaintiffs their costs of litigation. *Id.* at 5a.

In the second phase of the trial, the plaintiffs put on evidence (over CE's objection) that CE's parent paid $1.6 billion to purchase the stock of CE. Tr. 1198-1199. They also introduced (again over CE's objection) CE's balance sheet and income statement for the years 1991 and 1992. Tr. 1200-1201. In addition, plaintiffs' expert testified that CE could have prevented the escape of acidic water from its property by expending an additional $6 million. Tr. 1216-1217.

Having succeeded in putting into the record evidence of CE's wealth, out-of-state location, and foreign ownership (see Tr. 264-265, 1198-1199), plaintiffs' counsel proceeded to use that evidence to appeal for a large punitive exaction. Thus, during his punitive damages summation, he unabashedly appealed to the jury's bias against out-of-state companies, stating: "There is only one way to balance the scales, and that is to send them a message. Send them the message that **here in Georgia** we respect a person's rights and their property * * *." Tr. 1226 (emphasis added). In his rebuttal, plaintiffs' counsel emphasized CE's foreign ownership and urged the jury to punish CE on the basis of the wealth of its parent company or alternatively on the basis of CE's daily revenues:

> You have heard the testimony about what **this European company** paid for this company in 1991, about two years ago. They paid one billion 600 thousand dollars. One percent of that is 16 million dollars.

> * * * 16 million dollars in punitive damages to this company would be like a $50 fine to most folks.
>
> * * * [T]hey show total sales of two billion two hundred thousand dollars a year. In one day they have total sales of around 6 million dollars. While we sat here in this courtroom their sales at that rate would have been about 54 million dollars.

Tr. 1238-1239 (emphasis added). The jury responded to this appeal to bias against wealthy international corporations, imposing punitive damages in the astonishing amount of $45 million. App, *infra*, 4a.

CE filed post-trial motions for judgment as a matter of law as to punitive liability, new trial, and remittitur. The trial court held a hearing on the motions and at the conclusion of the hearing issued its rulings. The court began by observing:

> I think that I could say and, if the truth were known I might say on behalf of anyone who was here, no one ever expected that jury would do what they did. It underscores the uncertainty of litigation. Indeed, that's what it is all about, isn't it? If one elects a trial under our system and takes the risk of a verdict at a jury's hands[,] one may win, one may lose, and one may lose big and that's what happened here.
>
> Indeed, that is one of the virtues of our system although it is one for which the system is frequently condemned. As I have said in [the] past and don't mind saying now it is the uncertainty of the jury results that keeps us from trying so many cases that we can't keep up with our businesses.

4/25/94 Tr. 91.

The court then rejected the contention that the jury was animated by bias or prejudice. 4/25/94 Tr. 92-96. The court seemed satisfied that the fact that it was a federal district

court sitting in diversity was sufficient to forestall "home-cooking in judicial proceedings where there are foreign defendants or plaintiffs." *Id.* at 95-96.

Turning to the motion for judgment as a matter of law, the court stated: "I did not think as much of this case as the jury did, but that's not my job." 4/25/94 Tr. 102-103. The court indicated that the fact that CE had spent over $1.2 million in attempting to prevent the escape of acidic water was "powerful evidence" (*id.* at 104), but it ultimately concluded that "the evidence in its totality" supported the jury's finding of punitive liability (*id.* at 105).

As for the amount of punitive damages, the court noted:

> As I said before we were surprised and I don't think any of us was any more surprised than [plaintiffs' counsel]. * * * **I think it's fair to say that our surprise went beyond the mere acknowledgement of the unexpected and into the area of shock.**

Id. at 107 (emphasis added). The court continued:

> [T]he total sum of 45 million dollars, even in the context of the financial condition of this defendant, is too much. And whatever kind of window dressing we want to put on it as shocking the conscience of the 13th juror, it is beyond the amount that might deter the wrongdoer. Whatever fancy name might be appended to it when I think about it in my order, **to put it down as $45 million gives the system a black eye.** It's too much, but it did send a message of the importance and the significance that these jurors attached to the defendant's conduct and that message was not lost on me. And I have an obligation, if I am to precide [*sic*] over jury trials, take their time, take them away from their home, their offices and their labors, **I have an obligation to support and defend their efforts and their verdicts**

> and to be advised by them * * *. So I do not intend to abrogate the jury's verdict in its entirety and to write it down to an insignificant, but comfortable level that I know will not be appealed and may spread some money among the pockets of these nice local folks. I am going to do what the jury said to do, but I will do it in an amount that is sufficient, but not superfluous. $45 million shocks my conscious [*sic*].

Id. at 108-109 (emphasis added). The court then told the parties that it would grant a new trial unless the plaintiffs accepted a remittitur to an amount indicated in a sealed envelope. The purpose of withholding the amount was to give the parties a final chance to settle the case. *Id.* at 111.

After the parties failed to settle the case, the court entered its order denying the motion for judgment as a matter of law, granting a new trial unless the plaintiffs accepted a remittitur to $15 million, and awarding the plaintiffs costs of $227,000. App, *infra,* 3a-6a. The plaintiffs accepted the remittitur, and the court then entered 13 separate judgments for the various individual plaintiffs and groups of plaintiffs. *Id.* at 7a-35a.

CE appealed and, on September 8, 1995, the court of appeals affirmed the $15 million punitive exaction *without opinion.* App., *infra,* 1a-2a. Rehearing was denied on November 22, 1995. App., *infra,* 36a-37a.

REASONS FOR GRANTING THE PETITION

The Court has granted certiorari in *BMW of North America, Inc.* v. *Gore,* No. 94-896, to consider, among other things, whether the $2 million punitive damages award in that case is so excessive as to violate due process. The present petition raises a virtually identical issue (as well as a second issue about the adequacy of the remedy afforded by the trial court). Accordingly, the Court should hold the petition for disposition as appropriate in light of its decision in *BMW.*

See R. STERN, E. GRESSMAN, S. SHAPIRO & K. GELLER, SUPREME COURT PRACTICE § 4.16, at 192-193 (7th ed. 1993).

1. The petitioner in *BMW* argues that the $2 million punitive exaction in that case is disproportionate to the potential and actual harm suffered by the plaintiff and bears no reasonable relationship to the gravity of its alleged misconduct. The instant case presents an even more extreme example of a punitive judgment that cannot be justified by these or any other relevant criteria.

To begin with, here, as in *BMW*, the punitive damages bear no relationship to the harm suffered by the plaintiffs. The ratio of punitive to compensatory damages in *BMW* is 500:1, while in this case the ratio of punitive damages to the aggregate compensatory award is a comparably extreme **320:1**. Indeed, for several plaintiffs or groups of plaintiffs, the ratio of punitive damages to compensatory damages is fully **1,000:1**. See App., *infra*, 14a, 18a, 20a, 26a, 35a.[7]

The punitive damages also are more than **11** times respondents' own estimate of the market value of the *entire* 1,260 acres of land that they own. See Order at 3, *Johansen* v. *Combustion Engineering, Inc.*, No. CV191-178 (S.D. Ga. June 4, 1993) (observing that "the estimated aggregate fair market value of Plaintiffs' lands, absent contamination problems, is only $1.347 million"). Such a ratio is startlingly large given that the acidic water has had only a minor impact on the value and use of respondents' properties. See page 10, *supra*.

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[7] The only defense offered by the plaintiff in *BMW* for the large ratio in that case is the need to consider the impact of the defendant's conduct not only on him but on other Alabama purchasers of refinished vehicles. See Brief of Respondent at 38-39, 46, *BMW of North America, Inc.* v. *Gore*, No. 94-896 (filed May 30, 1995). That "justification" is not available to respondents in this case.

Equally significant, here, as in *BMW*, the conduct being punished hardly can be characterized as heinous: there is no bodily harm, no diminution in property value, no deliberate corporate decision to save money at the expense of others, and no cover up.[8] The reclamation of the mine site has been monitored continuously by EPD. See Tr. 382-383, 941; P. Exh. 9, 23, 39; D. Exh. 55; Ct. Exh. 1. If CE were an egregious environmental villain, the record would surely contain evidence of repeated demands for action by EPD, threats of enforcement actions, and allegations of consistent violations of law. Yet instead, the record reflects that EPD saw fit to charge permit violations on only a single occasion over a seven-year period and, on other occasions, took the initiative to praise CE for its cooperation and responsiveness. See Ct. Exh. 1, at 43, 61, 70. At the end of the day, *the very worst* that can be said of CE's conduct is that it involved the failure *to do more* to prevent *any possible harm* to plaintiffs' property. Indeed, even plaintiffs' expert conceded that CE "might just have a careless disregard" and specified that he "wasn't implying intent here." Tr. 750. That simply

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[8] Indeed, although CE has conceded that a jury could reasonably find from the evidence that CE committed the torts of trespass and nuisance, CE contended in both the district court and the court of appeals (and remains of the view) that there was not sufficient evidence of the "entire want of care" needed for imposition of punitive damages under Georgia law. See Ga. Code Ann. § 51-12-5.1(b); *General Refractories Co.* v. *Rogers*, 239 S.E.2d 795, 799-800 (Ga. 1977) (reversing imposition of punitive damages against mine operator that had caused damage to neighboring property where operator "ha[d] taken all of the steps required by the supervising state authority and ha[d] expended substantial sums in doing so"). The court of appeals provided no explanation for its rejection of CE's argument.

is not the stuff of a $15 million punishment that is nearly 320 times the compensatory damages.[9]

Finally, as in *BMW*, the $15 million punishment here is far out of line with other relevant benchmarks. For instance, it is a remarkable **150** times the punishment set by a jury in another landowner's case against CE arising out of the very same set of facts. See *Combustion Chems., Inc.* v. *Spires*, 433 S.E.2d 60 (Ga. Ct. App.), cert. denied, 1993 Ga. LEXIS 969 (Ga. Oct. 12, 1993). In addition, it is **60** times the maximum amount of punitive damages permitted under Georgia law in cases that do not involve a specific intent to cause harm. See Ga. Code Ann. § 51-12-5.1(f), (g) (establishing cap of $250,000 per case unless there is proof of "specific intent to cause harm").[10]

In the court below, respondents defended the $15 million remitted exaction primarily upon the ground that it is not disproportionate to the amount of money — $6 million according to their expert (see Tr. 1216-1218) — that CE allegedly saved by failing to undertake the additional steps needed to ensure that no acidic water would escape its

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[9] Although we do not here present a substantive due process challenge to the imposition of punitive damages, it bears mention that the Eighth Circuit, in an opinion by Justice White, has expressed the view that punitive damages are not constitutionally permissible *at all* where the defendant's tort was "the 'merely objectionable' act of 'undertaking a less costly alternative to remedy a perceived problem before moving to a more expensive [solution].'" *Pulla* v. *Amoco Oil Co.*, 1995 WL 747259, at *10 n.19 (1995) (quoting *Burke* v. *Deere & Co.*, 6 F.3d 497, 512 (8th Cir. 1993), cert. denied, 114 S. Ct. 1063 (1994)).

[10] CE argued strenuously in the lower courts that there was insufficient evidence of an intent to cause harm. The court of appeals provided no explanation for its rejection of this argument and its refusal to reduce the punitive damages to the amount of the cap.

property.[11] However, there is no reasonable basis for using such avoided costs as the yardstick for measuring the proper size of reasonable punishment; indeed, if anything, a decision to increase the amount of punishment as the cost of avoiding small harms increases is a perversion of the goal of reasonable deterrence.

The primary purpose of punitive damages is deterrence, *i.e.*, to cause the defendant and others similarly situated to act in ways that are socially acceptable or beneficial. But the degree of wrongfulness of a defendant's conduct is not greater when it requires $6 million to avoid a harm rather than $6,000. To the contrary, the greater the additional expense required, the more wasteful and undesirable it is to coerce companies to undertake it to prevent a small harm. Thus, in this case, it is manifestly inappropriate to punish CE in any substantial amount, let alone $15 million, for failing to make what an economically irrational expenditure, particularly given that not a single one of the respondents complained to CE at any time during the reclamation process.

Under respondents' theory, the more *reasonable* the defendant's conduct is (*i.e.*, the larger the cost of the precaution in relation to its benefit), the more *severe* the punishment should be. Thus, if the cost of preventing the escape of acidic water were $100 million, respondents presumably would contend that a $250 million exaction would have been necessary and appropriate to prevent their $47,000 harm. The use of punitive damages to force the kind of economi-

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[11] Significantly, before suit was filed no one — not the EPD, any of the plaintiffs, or anyone else — ever suggested to CE that such steps were necessary or appropriate.

cally inefficient expenditure demanded by respondents is the very definition of *over*deterrence.[12]

In sum, the conduct here is on the low end of the reprehensibility spectrum, and the punishment bears no reasonable relationship to the harm suffered by the plaintiffs. Because the case is, in these respects, quite similar to *BMW*, the Court should hold CE's petition and dispose of it as appropriate in light of its decision in that case. If the Court does not reach the excessiveness issue in *BMW*, we respectfully submit that this case would be an excellent one in which to address that exceedingly important and recurring issue.[13]

2. In addition to the excessiveness issue, this case presents a remedial question that merits review: how to determine whether a grossly excessive punitive verdict was

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[12] Under Learned Hand's classic formulation, CE's failure to pay $6 million to prevent a loss of $47,000 would not even be negligence. See *United States* v. *Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947) (the failure to take a precaution is negligent only if the cost of the precaution is less than the expected loss if the precaution is foregone).

[13] We note that the fact that the court of appeals chose not to explain its reasons for rejecting CE's excessiveness argument despite its awareness that this Court was considering a similar argument in *BMW* weighs in favor of, not against, granting review. Less than two years ago, this Court emphasized the importance of judicial review of large punitive damages judgments, particularly when, as here, they are rendered against out-of-state corporations. *Honda Motor Co.* v. *Oberg*, 114 S. Ct. 2331, 2340-2341 (1994). By refusing to explain its reasons for upholding an exaction that is 7½ times the one under review in *BMW*, the Eleventh Circuit has abdicated its responsibility to provide the protection that this Court required in *Honda*. That sort of disdain for what this Court repeatedly has indicated is an important issue makes this case especially worthy of review. Cf. *United States* v. *Edge Broadcasting Co.*, 113 S. Ct. 2696, 2702 n.3 (1993) (deeming it "remarkable and unusual" for a court of appeals to hold a federal statute unconstitutional in an unpublished *per curiam* opinion).

tainted by passion and prejudice, which is curable only by a new trial.

It is a well established principle of federal law that, when a verdict is the product of passion, prejudice or bias, the defendant is entitled to a new trial, not simply a remittitur of the damages award. *Minneapolis St. P. & S. Ste. M. Ry.* v. *Moquin*, 283 U.S. 520, 521-522 (1931). See also *TXO Prod. Corp.* v. *Alliance Resources Corp.*, 113 S. Ct. 2711, 2739 (1993) (O'Connor, J., dissenting) (when punitive damages are the product of "considerations inconsistent with due process," the judgment should be reversed and the case should be submitted to a new jury); 11 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2815, at 165-167 & n.14 (1995). A remittitur cannot cure an award infected by passion and prejudice because there is no way of knowing what punishment an untainted jury would have reached. See *Moquin*, 283 U.S. at 521-522.

But stating the rule has proved far easier than applying it. The courts of appeals have shown a marked inconsistency (not to mention little in the way of reasoning) in responding to arguments that grossly excessive verdicts were the product of passion and prejudice. Compare, *e.g.*, *Dunn* v. *HOVIC*, 1 F.3d 1371, 1383-1384 (3d Cir.) (en banc) (rejecting argument that $25 million punitive exaction, which was reduced by the trial court to $2 million and further reduced by the panel to $1 million, was the product of passion and prejudice), modified in part on other grounds, 13 F.3d 58 (3d Cir.), cert. denied, 114 S. Ct. 650 (1993), with *Auster Oil & Gas, Inc.* v. *Stream*, 835 F.2d 597, 603-604 (5th Cir.) (finding passion and prejudice and ordering a new trial in case in which trial court had ordered a $5 million punitive exaction reduced to $650,000), cert. denied, 488 U.S. 848 (1988), and *Wells* v. *Dallas Independent Sch. Dist.*, 793 F.2d 679, 683-684 (5th Cir. 1986) (finding passion and prejudice and ordering a new trial in case in which trial court had ordered $1.9 million award reduced to $250,000).

As the number and frequency of gigantic punitive damages verdicts continues to skyrocket,[14] the need for guidance on the "passion and prejudice" inquiry has become all the more urgent. The remittiturs in several recent cases have been so substantial as to raise serious question about whether passion and prejudice were at work.[15] Yet it is not uncommon for the lower courts (perhaps out of a distaste for retrying cases) to ignore this problem in proposing remittiturs of demonstrably excessive verdicts. The attitude of the district court in this case is illustrative. Despite concluding that the $45 million exaction "gives the system a black eye" (4/25/94 Tr. 108), the district court thought its duty to be "to support and defend [the juror's] efforts and their verdicts" (*ibid.*). The failure of the courts in this case and others to recognize that the "passion and prejudice" inquiry is a serious one that cannot be papered over with a sizeable remittitur highlights the need for further guidance.

This Court recently has begun the process of providing such guidance. Thus, several Justices have suggested that the size of an award is an important factor in determining whether that award was the product of passion and prejudice. See *TXO*, 113 S. Ct. at 2725 (Kennedy, J., concurring); *id.* at 2729-2731 (O'Connor, J., dissenting, joined by White, J.). See also *Auster Oil*, 835 F.2d at 603-604; *Wells*, 793 F.2d at 683-684.

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[14] For a partial listing of multimillion dollar verdicts rendered since the grant of certiorari in *BMW*, see Brief of the Chamber of Commerce of the United States of America as Amicus Curiae in Support of the Petitioner at 3-4, *Union Security Life Ins. Co.* v. *Crocker*, No. 95-740 (filed Dec. 8, 1995).

[15] For example, the Chamber of Commerce's survey includes remittiturs of a $60 million verdict to $20 million, a $50 million verdict to $5 million, a $38 million verdict to $5 million, and a $22.5 million verdict to $4 million. See *id.* at 5.

A majority of the Court also has recognized that the extent to which the plaintiff focuses on a corporate defendant's wealth and out-of-state location bears on the existence of passion and prejudice. See *Honda Motor Co.* v. *Oberg*, 114 S. Ct. 2331, 2340-2341 (1994) ("the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences"); *TXO*, 113 S. Ct. at 2723 (plurality opinion) (agreeing with petitioner that "the emphasis on the wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations, a risk that is of special concern when the defendant is a nonresident"); *id.* at 2725-2726 (Kennedy, J., concurring) (a punitive award that is the product of "the jury's raw, redistributionist impulses stemming from antipathy to a wealthy, out-of-state, corporate defendant" would violate "the standards of rationality and fairness the Constitution requires"); *id.* at 2736-2739 (O'Connor, J., dissenting) (concluding that the jury had been "influenced unduly by [the defendant's] out-of-state status and its large resources").

Because *TXO* involved conduct that the Court believed could explain the massive punishment imposed in that case, the task of providing guidance for the "passion and prejudice" inquiry, like that of refining "the standard that will identify unconstitutionally excessive awards" (*Honda*, 114 S. Ct. at 2335), remains uncompleted. We submit that the present case presents an excellent opportunity to provide further guidance on the "passion and prejudice" inquiry.

To begin with, the original **$45 million** punitive exaction was truly monstrous — "shock[ing]" in the words of the trial court. That exaction was fully **$37 million** higher than the largest punishment ever permitted after appeal in a case

arising out of Georgia[16] and close to **$36 million** higher than the largest punishment ever before permitted by the Eleventh Circuit.[17] The jury's huge exaction also was utterly disproportionate to the harm suffered by respondents — constituting over **950** times their compensatory damages.

Moreover, the record reflects that, in appealing for a large punishment, respondents' counsel relied heavily on CE's out-of-state location, foreign parent, and substantial financial resources. See pages 11-12, *supra*. His summation was laced with us-against-them rhetoric (see Tr. 1226, 1228, 1238, 1239) and unsubstantiated assertions that CE's accountants decided that the company could "just take our waste and dump it on their land" (Tr. 1228; see also Tr. 1130, 1241). He also directly urged the jury to base CE's punishment on a percentage of the $1.6 billion price its European parent paid to acquire it or alternatively to remove the $54 million in revenues that CE assertedly earned during the nine days of trial (Tr. 1238-1239) — all of which relate entirely to lawful activities having nothing whatever to do with the costly effort to reclaim the mine site.

Finally, unlike in *TXO*, there is no evidence in this case of deliberate misconduct that would justify an enormous punishment of the amount meted out by the jury. See pages

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[16] The highest punishment permitted after appeal in Georgia was $8 million in a case involving an automaker's allegedly deliberate decision to defer installation of a safety device with knowledge that the existing design would result (as it did in that case) in the fiery deaths of some number of occupants of its vehicles. See *Ford Motor Co.* v. *Stubblefield*, 319 S.E.2d 470 (Ga. Ct. App. 1984).

[17] As best we can discern from computerized searches, the highest punishment ever approved by the Eleventh Circuit prior to this case was $9.1 million in a class action alleging that a chicken processor had engaged in a deliberate course of defrauding chicken growers over an eight-year period. See *Braswell* v. *Conagra, Inc.*, 936 F.2d 1169 (11th Cir. 1991).

16-17, *supra*. Indeed, the trial court expressly recognized that "to put it down as $45 million gives the system a black eye." 4/25/94 Tr. 108.

Thus, whether or not $15 million would be excessive (and we think it plainly is), the fact that the jury chose three times that amount after hearing inflammatory argument by respondents' counsel reflects that the $45 million exaction was not merely excessive. It was the product of passion and prejudice that could be cured only by awarding a new trial. This Court should grant CE's petition on this issue to provide further guidance on the process for distinguishing verdicts that are tainted by passion and prejudice from those that are simply greater than necessary to accomplish punishment and deterrence.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted.

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JANUARY 1996

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-8774

D.C. Docket No. 1:91-00178-CV

Filed: U.S. Court of Appeals, Eleventh Circuit
(Sept. 8, 1995)

CHERYL MALOOF JOHANSEN; MILDRED D. GOLDMAN; OLEETA D. BRITT; GREGORY B. RICHARD; RALEIGH M. LONG, SR.; CLARENCE E. NORMAN, SR.; JERRY L. MALOOF; LAWRENCE S. PEELER; R. H. BECKUM; SAMUEL CLARY McGILL; KATHERINE McGILL LAMAR; AUBREY G. McGILL; EUGENE H. McGILL, JR.; ELIZABETH BEVEL McGILL; JAMES CURTIS McGILL; CHERRY McGILL ROWLAND; INEZ M. McWHORTER; KATHLEEN McGILL BEGGS; WALTER COLLINS McGILL, individually and as Administrator of the A. C. McGill Estate and as Executor of the Lillian Inez Norman McGill Estate; BERNARD ALLEN DANNER,

Plaintiffs-Appellees,

WILLIAM E. JONES; RAYMOND H. JONES; MARTHA JONES LONG,

Consolidated Plaintiffs-Appellees,

versus

COMBUSTION ENGINEERING, INC.,

Defendant-Appellant.

Appeal from the United States
District Court for the Southern
District of Georgia

(September 8, 1995)

Before BIRCH and BARKETT, Circuit Judges, and HENDERSON, Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.[1]

[1] 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is support by the record;

(e) judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, *et al.*,	*	
Plaintiffs,	*	CIVIL ACTION
	*	CV191-178
vs.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

ORDER

Pending in the above-captioned case are the following post trial motions filed by Defendant Combustion Engineering, Inc.: "Defendant's Motion for Judgment as a Matter of Law as to [each Plaintiff]"; "Defendant's Motion for New Trial as to Judgment on Jury Verdict in Favor of [each Plaintiff]"; "Motion to Stay Execution or Proceedings on Judgment on Jury Verdict Entered in Favor of [each Plaintiff]"; and "Motion to Amend Judgment on Jury Verdict in Favor of Plaintiffs."[1]

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[1] A separate Motion For Judgment as a Matter of Law, Motion for a New Trial, and Motion to Stay Execution or Proceedings was filed with respect to each entry of judgment that awarded combined compensatory and punitive damages according to the respective verdicts. The Court's ruling on these three motions applies, of course, to all such motions filed. Only one Motion to Amend Judgment on Jury Verdict was filed. This motion, as written, applies only to the Judgment on Jury Verdict awarding

On April 25, 1994, Defendant's various post trial motions came on for hearing. At the hearing, counsel for each side presented their respective arguments for or against the relief sought in these motions. Having heard and considered the arguments of counsel at the hearing and in the parties' briefs, the Court orally entered certain findings and conclusions into the record at the close of the hearing.

For the reasons stated into the record at the motions hearing, Defendant's motions for judgment as a matter of law are DENIED.[2] Any arguments not expressly addressed by the Court from the bench have been carefully considered in light of relevant legal authority and rejected accordingly.

For the reasons stated into the record at the motions hearing, I conclude that the sum of $45,000,000.00, which is the aggregate total of sums the jury awarded to Plaintiffs as punitive damages, is excessive. Defendant's motions for a new trial are therefore provisionsally GRANTED;[3] provided, however, that Plaintiffs may unanimously elect in lieu of a new trial to accept the aggregate sum of $15,000,000.00 as the total punitive damages in this case. In the event Plaintiffs notify the Court by the close of business May 20, 1994, of their unanimous consent to this remittitur, Defendant's motions for a new trial shall be denied.[4] If one or more Plaintiffs refuses to accept this remittitur, all of Defendant's motions for a new trial shall be granted, limited to the issue of punitive damages. This remittitur has no effect on the amount of compensatory damages awarded each Plaintiff.

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the sum of $227,00.00 to all Plaintiffs collectively.

[2] *See* note 1, *supra*.

[3] *See* note 1, *supra*.

[4] The amount of remittitur applicable to each Plaintiff shall be in exact proportion to the amount of punitive damages originally awarded each Plaintiff relative to the $45,000,000.00 aggregate total.

Having determined that the aggregate award of punitive damages is excessive, the Judgments on Jury Verdicts entered in this case on July 7, 1993, reflecting combined compensatory and punitive damages are hereby **VACATED**.

In its Motion to Amend Judgment on Jury Verdict in Favor of Plaintiffs, filed with respect to the July 7, 1993, Judgment on Jury Verdict of $227,000.00,[5] Defendants request that I "make clear" that (a) Plaintiffs' claims for equitable relief have not been adjudicated; (b) the judgment is not a final judgment under Rule 54(b); (c) the Court reserves jurisdiction over Plaintiffs' claims for equitable relief; and (d) the time for filing an appeal does not begin to run until such time as the Court enters a final judgment that adjudicates all claims in this action. Defendant further requests that the Court amend the judgment to state that the sum of $227,000.00 represents an award of Plaintiffs' litigation expenses.

For the reasons stated by the Court into the record at the motions hearing, Defendant's Motion to Amend Judgment on Jury Verdict in Favor of Plaintiffs is GRANTED IN PART and DENIED IN PART. The July 7, 1993, Judgment on Jury Verdict awarding Plaintiffs the sum of $227,000.00 is hereby amended to the extent necessary to comport with the balance of this paragraph. Plaintiffs' claims for equitable relief in this case have not been fully adjudicated. The Court reserves jurisdiction over Plaintiffs' claims for equitable relief. The July 7, 1993, Judgment on Jury Verdict in the amount of $227,000.00 reflects the jury's award of litigation expenses to the Plaintiffs collectively.

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[5] Although this motion seeks modification of the July 7, 1993, Judgment on Jury Verdict awarding Plaintiffs $227,000.00, the relief sought in this motion would necessarily impact the other judgments entered in the case, however, those judgments have been vacated.

Regarding the finality of the July 7, 1993, Judgment on Jury Verdict for $227,000.00 and the time for filing an appeal therefrom, the jury's award of litigation expenses is final insofar as this Court is concerned, as is the jury's awards of compensatory damages. However, fariness dictates that the time for filing an appeal as to these awards, should Defendant desire to appeal, will not begin to run until such time as the Court enters a final judgment (or judgments) that adjudicates all *legal* claims in this action, including punitive damages. As the Plaintiffs may elect to proceed with a new trial on the issue of punitive damages, entry of final judgment with respect to the jury's awards of litigation expenses and compensatory damages must await a future date. The time for filing an appeal will not begin to run until such time as the Court directs the entry of final judgment as to *all* of Plaintiffs' *legal* claims, that is, litigation expenses, compensatory damages, and punitive damages. The Court notes, however, that the pendency of the form and implementation of injunctive relief will *not* affect the finality of the jury's verdicts and corresponding judgments. The Court intends to effect a Rule 54(b), Fed. R. Civ. P., division of Plaintiffs' legal and equitable claims as necessary to permit the immediate prosecution of any appeal.

ORDER ENTERED at Augusta, Georgia, this 6th day of May, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, *et al.*,	*	
Plaintiffs,	*	
vs.	*	CIVIL ACTION CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

ORDER

By Order dated May 6, 1994, the Court conditionally granted the Defendant's motions for new trial, giving Plaintiffs the option to accept a remittitur in lieu of a new trial. On May 17, 1994, the Plaintiffs filed with the Court their "Consent to Remittitur," agreeing to accept in lieu of a new trial the Court's reduction of the punitive damages awarded by the jury. As the Plaintiffs have elected to accept the remittitur, the Defendant's motions for new trial are DENIED.

The May 6, 1994, Order specified that "[t]he amount of remittitur applicable to each Plaintiff shall be in exact proportion to the amount of punitive dmages originally awarded each Plaintiff relative to the $45,000,000.00 aggregate total [of punitive damages awarded to all Plaintiffs]." (May 6, 1994, Order at 3 n. 5.) Contemporaneously with the entry of this Order, separate

judgments will be entered in favor of the respective Plaintiffs to reflect compensatory damages awarded by the jury together with the reduced punitive damages. There being no just reason for delay, these judgments are final for purposes of Fed. R. Civ. P. 54(b). Further, in accordance with the May 6, 1994, Order, the time prescribed by applicable rules for filing an appeal from these judgments, as well as the time for filing an appeal from the July 7, 1993, Judgment on Jury Verdict awarding Plaintiffs the sum of $227,000.00 as litigation expenses, will begin to run as of the date this Order and the corresponding judgments are entered. As indicated in the May 6, 1994, Order, the Court reserves jurisdiction over Plaintiffs' claim for equitable relief, and the Court will schedule such consultations with counsel or convene such hearings as determined necessary to develop and implement appropriate equitable relief.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION
	*	CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff R. H. Beckum recover of Defendant, Combustion Engineering, Inc., the sum of $3,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,003,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Bernard Allen Danner recover of Defendant, Combustion Engineering, Inc., the sum of $2,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,002,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs Mildred G. Goldman and Oleeta D. Britt recover of Defendant, Combustion Engineering, Inc., the sum of $2,000.00 as compensatory damages plus $2,000,000.00 as punitive damages, for a combined award of damages in the sum of $2,002,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN,	*	
MILDRED D. GOLDMAN, OLEETA	*	
D. BRITT, GREGORY B.	*	
RICHARD, RALEIGH M. LONG,	*	
SR., CLARENCE E. NORMAN, SR.,	*	
JERRY L. MALOOF, LAWRENCE S.	*	
PEELER, R.H. BECKUM,	*	
WALTER COLLINS MCGILL,	*	
INDIVIDUALLY, and as	*	
ADMINISTRATOR OF THE A.C.	*	
MCGILL ESTATE, and as	*	
EXECUTOR OF THE LILLIAN INEZ	*	
NORMAN MCGILL ESTATE,	*	
SAMUEL CLARY MCGILL,	*	
KATHERINE MCGILL LAMAR,	*	
AUBREY G. MCGILL, EUGENE H.	*	
MCGILL, JR., ELIZABETH BEVEL	*	
MCGILL, JAMES CURTIS MCGILL,	*	
CHERRY MCGILL ROWLAND,	*	
INEZ M. MCWHORTER,	*	
KATHLEEN MCGILL BEGGS and	*	
BERNARD ALLEN DANNER,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
	*	
Defendant.	*	
	*	
AND	*	
	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs Cheryl Maloof Johansen and Jerry L. Maloof recover of Defendant, Combustion Engineering, Inc., the sum of $10,000.00 as compensatory damages plus $2,000,000.00 as punitive damages, for a combined award of damages in the sum of $2,010,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN,	*	
MILDRED D. GOLDMAN, OLEETA	*	
D. BRITT, GREGORY B.	*	
RICHARD, RALEIGH M. LONG,	*	
SR., CLARENCE E. NORMAN, SR.,	*	
JERRY L. MALOOF, LAWRENCE S.	*	
PEELER, R.H. BECKUM,	*	
WALTER COLLINS MCGILL,	*	
INDIVIDUALLY, and as	*	
ADMINISTRATOR OF THE A.C.	*	
MCGILL ESTATE, and as	*	
EXECUTOR OF THE LILLIAN INEZ	*	
NORMAN MCGILL ESTATE,	*	
SAMUEL CLARY MCGILL,	*	
KATHERINE MCGILL LAMAR,	*	
AUBREY G. MCGILL, EUGENE H.	*	
MCGILL, JR., ELIZABETH BEVEL	*	
MCGILL, JAMES CURTIS MCGILL,	*	
CHERRY MCGILL ROWLAND,	*	
INEZ M. MCWHORTER,	*	
KATHLEEN MCGILL BEGGS and	*	
BERNARD ALLEN DANNER,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
	*	
Defendant.	*	
	*	
AND	*	
	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Martha Jones Long recover of Defendant, Combustion Engineering, Inc., the sum of $1,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,001,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Raymond H. Jones recover of Defendant, Combustion Engineering, Inc., the sum of $1,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,001,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff William E. Jones recover of Defendant, Combustion Engineering, Inc., the sum of $1,500.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,001,500.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Raleigh M. Long, Sr. recover of Defendant, Combustion Engineering, Inc., the sum of $2,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,002,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Walter Collins McGill recover of Defendant, Combustion Engineering, Inc., the sum of $1,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,001,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs Walter Collins McGill, Samuel Clary McGill, Katherine McGill Lamar, Aubrey G. McGill, Inez M. McWhorter, Kathleen McGill Beggs, Cherry McGill Rowland, Eugene H. McGill, Jr., James Curtis McGill, Elizabeth Bevel McGill recover of Defendant, Combustion Engineering, Inc., the sum of $10,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,010,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendants. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Clarence Norman, Sr. recover of Defendant, Combustion Engineering, Inc., the sum of $7,500.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,007,500.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Lawrence S. Peeler recover of Defendant, Combustion Engineering, Inc., the sum of $5,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,005,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CHERYL MALOOF JOHANSEN, MILDRED D. GOLDMAN, OLEETA D. BRITT, GREGORY B. RICHARD, RALEIGH M. LONG, SR., CLARENCE E. NORMAN, SR., JERRY L. MALOOF, LAWRENCE S. PEELER, R.H. BECKUM, WALTER COLLINS MCGILL, INDIVIDUALLY, and as ADMINISTRATOR OF THE A.C. MCGILL ESTATE, and as EXECUTOR OF THE LILLIAN INEZ NORMAN MCGILL ESTATE, SAMUEL CLARY MCGILL, KATHERINE MCGILL LAMAR, AUBREY G. MCGILL, EUGENE H. MCGILL, JR., ELIZABETH BEVEL MCGILL, JAMES CURTIS MCGILL, CHERRY MCGILL ROWLAND, INEZ M. MCWHORTER, KATHLEEN MCGILL BEGGS and BERNARD ALLEN DANNER,	*	
Plaintiffs,	*	
v.	*	CIVIL ACTION
	*	CV191-178
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	
AND	*	

WILLIAM E. JONES, RAYMOND H. JONES, and MARTHA JONES LONG,	*	
Plaintiffs,	*	CIVIL ACTION CV192-132
v.	*	
COMBUSTION ENGINEERING, INC.,	*	
Defendant.	*	

JUDGMENT

The above-captioned case was tried before the Court and a jury. The jury duly rendered its verdicts, awarding the Plaintiffs compensatory and punitive damages, as well as litigation expenses, against the Defendant. All Plaintiffs unanimously agreed to accept the Court's remittitur of the punitive damages awarded by the jury.

In accordance with the jury's verdict and Plaintiffs' unanimous consent to the Court's remittitur, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff Gregory B. Richard recover of Defendant, Combustion Engineering, Inc., the sum of $1,000.00 as compensatory damages plus $1,000,000.00 as punitive damages, for a combined award of damages in the sum of $1,001,000.00, with interest thereon at the federal rate from the date this Order is entered.

ORDER ENTERED at Augusta, Georgia, this 16th day of June, 1994.

Dudley H. Bowen, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-8774

CHERYL MALOOF JOHANSEN; MILDRED D. GOLDMAN; OLEETA D. BRITT; GREGORY B. RICHARD; RALEIGH M. LONG, SR.; CLARENCE E. NORMAN, SR.; JERRY L. MALOOF; LAWRENCE S. PEELER; R. H. BECKUM; SAMUEL CLARY MCGILL; KATHERINE MCGILL LAMAR; AUBREY G. MCGILL; EUGENE H. MCGILL, JR.; ELIZABETH BEVEL MCGILL; JAMES CURTIS MCGILL; CHERRY MCGILL ROWLAND; INEZ M. MCWHORTER; KATHLEEN MCGILL BEGGS; WALTER COLLINS MCGILL, Individually and as Administrator of the A. C. McGill Estate and as Executor of the Lillian Inez Norman McGill Estate; BERNARD ALLEN DANNER,

Plaintiffs-Appellees,

WILLIAM E. JONES; RAYMOND H. JONES; MARTHA JONES LONG,

Consolidated Plaintiffs-Appellees,

versus

COMBUSTION ENGINEERING, INC.,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Georgia

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion September 8, 11th Cir., 1995, ___F.2d___).

Before: BIRCH and BARKETT, Circuit Judges, and HENDERSON, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Rosemary Barkett

UNITED STATES CIRCUIT JUDGE

DATED: November 22, 1995